

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DANIAL DAVID GARCIA,)	
)	
Petitioner,)	
)	
v.)	1:16CV450
)	1:04CR86-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On February 5, 2019, the United States Magistrate Judge's Recommendation was filed and notice was served on Petitioner pursuant to 28 U.S.C. § 636. No objections were filed, and Petitioner filed a Notice [Doc. #126] indicating his concurrence with the Recommendation.

The Court has reviewed the Recommendation and Petitioner's Notice and finds that the Recommendation should be adopted with modification.

IT IS THEREFORE ORDERED that the prior stay in this case is LIFTED; that Petitioner's Motion [Doc. #100] to vacate, set aside or correct sentence under 28 U.S.C. § 2255 is GRANTED as to Petitioner's challenge to his sentence under the Armed Career Criminal Act in Count Three of the Superseding Indictment, and otherwise DENIED as having been withdrawn; that Petitioner's prior sentence is VACATED; and that a corrected judgment will issue reducing Petitioner's term of imprisonment for his conviction under 18 U.S.C. § 922(g) in Count Three to time served and his term of supervised release for that conviction to three years, with

all other provisions of the Judgment, including the sentence for Count Two,
remaining as previously set.

This the 29th day of March, 2019.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge